

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----x
KARL F. OWEN,

Plaintiff,

- against -

NO PARKING TODAY INC.,

Defendant.
-----x

Docket No.:

ECF CASE

COMPLAINT

PLAINTIFF DEMANDS
A JURY TRIAL

FILED

JUN 23 2008

USDC WP SDNY

08 Civ. 5626
BATTS

Plaintiff, KARL F. OWEN, by his attorneys, The Law Firm of ROBERT DAVID GOODSTEIN, ESQ., complaining of the Defendant, allege as follows:

1. This is an action to remedy the failure of Defendant to properly pay Plaintiff overtime at the rate of time-and-a-half as required by the Fair Labor Standards Act of 1938, as amended, 29 USC §201 *et seq.* Jurisdiction is conferred upon this Court by 29 USC §216 (b) of the Fair Labor Standards Act, by 28 USC §1331, as this action arises under the laws of the United States, and by 28 USC §1337, as this action arises under Acts of Congress regulating commerce. Additionally, under the principle of pendent jurisdiction, Plaintiff claims failure of Defendant to pay wages due and owing, pursuant to the New York State Labor Law §190 *et seq.*, and §652(1); and for failure to pay Plaintiff overtime at the rate of time-and-a-half as required by 12 NYCRR §142-2.2.

PARTIES

2. Plaintiff, KARL F. OWEN, (hereinafter "OWEN") is a resident of the County of New York, and the State of New York.

3. Defendant NO PARKING TODAY INC. (hereinafter "NO PARKING"), on information and belief is a New York corporation with offices located at 1228 Southern Boulevard,

Bronx, New York 10459. Defendant is an employer engaged in interstate commerce, and subject to the Fair Labor Standards Act (29 USC §201 *et seq.*) and to the New York State Labor Law (Labor Law §§190 *et seq.*)(652(1)).

FACTS

4. Plaintiff was hired by Defendant on or about December 2004 at a salary of nine (\$9.00) per hour. Plaintiff was employed by Defendant through October 2007, Defendant stopped calling him for work.

5. Plaintiff held an hourly paid non-exempt position. His salary was \$9.00 per hour until February 2007, when his salary was increased to \$11.00 per hour.

6. Plaintiff was always required to work six (6) or seven (7) days a week, averaging more than 40 hours per week. Plaintiff worked between approximately 100-160 hours per week.

7. By valid employment contract, Plaintiff was to be employed from February 5, 2007 through February 4, 2008 at \$13.50 per hour. Defendant breached this contract. (See Exhibit #1).

AS AND FOR A FIRST CAUSE OF ACTION

8. Plaintiff repeats and re-alleges each allegation contained in each preceding paragraph of this Complaint as though fully set forth herein.

9. Although Plaintiff worked overtime during the period December 2004 through October 2006 he did not receive overtime compensation for this period.

10. Plaintiff earned nine (\$9.00) Dollars per hour during December 2004 through February 2007; and \$11.00 per hour during February 2007 through October 2007.

11. Plaintiff received no compensation for the hours he worked over forty (40) per week.

12. Plaintiff did not receive overtime payment at the rate of time-and-a-half, in violation of the Fair Labor Standards Act, although he worked more than forty (40) hours per week.

13. Defendant's failure to pay Plaintiff wages and overtime at the rate of time-and-a-half was willful.

AS AND FOR A SECOND CAUSE OF ACTION
PENDENT CAUSE OF ACTION

14. Plaintiff repeats and re-alleges each allegation contained in each proceeding paragraph of the Complaint.

15. From December 2004 through October 2007, Plaintiff was denied overtime at the rate of time-and-a-half in violation of 12 NYCRR §142-2.2;

16. From December 2004 through October 2007, Plaintiff was denied wage compensation for hours worked, in violation of Labor Law §190 *et seq.*, and §652(1). This violation was willful. From December 2004 through October 2007, Plaintiff worked over ten (10) consecutive hours per day but was not paid one addition hour required by New York Law.

AS AND FOR A THIRD CAUSE OF ACTION
(SECOND PENDENT CAUSE OF ACTION)

17. Plaintiff repeats and re-alleges each allegation contained in each proceeding paragraph of the Complaint.

18. On or about February 5, 2007, Plaintiff and Defendant entered into an Agreement (copy annexed as Exhibit #1), wherein Defendant, obligated itself to employ Plaintiff for a period of one (1) year at the rate of \$12.50 per hour.

19. That at all times hereinafter mentioned, Plaintiff continued to work for Defendant in the State of New York, until October 2007 when Defendant ceased calling Plaintiff for work. However, Plaintiff was paid only \$11.00 per hour, not \$12.50.

20. That the foregoing action on the part of Defendant constituted a termination of Plaintiff's employment without cause, and breached of Plaintiff's employment contract.

WHEREFORE, Plaintiff requests this Court enter an Order in favor of Plaintiff and against Defendant:

On The Fair Labor Standards Act Causes of Action

- (a) Declaring Defendant violated the Fair Labor Standards Act (29 Code USC §201 *et seq.*) for the period between December 2007 through and including October 2007;
- (b) Declaring Defendant's violation of the Fair Labor Standards Act was willful;
- (c) Granting Plaintiff payment of his hourly wage for each and every hour worked during this periods;
- (d) Granting Plaintiff time-and-a-half for each and every hour worked overtime during these periods;
- (e) Granting Plaintiff an equal amount in liquidated damages for the period dating three (3) years before the filing of this Complaint; and
- (f) Awarding Plaintiff his costs and reasonable attorneys' fees, together with such other and further relief as to the Court seems just and proper.

On the New York State Labor Law Cause of Action

- (g) Declaring Defendant violated the New York State Labor Law and 12 NYCRR §142-2.2;
- (h) Declaring that Defendant's violation of the New York State Labor Law and 12 NYCRR §142-2.2 was willful;

- (i) Granting Plaintiff payment of his hourly wage for each and every hour worked during this periods;
- (j) Awarding Plaintiff for the period November 2004 through October 2007, a payment for overtime at the rate of time and-a-half for working over forty (40) hours per week during the period;
- (k) Finding that Defendant's refusal to pay Plaintiff the required correct wages was willful, and awarding Plaintiff an additional amount as liquidated damages equal to twenty five (25%) percent of the total amount of wages found to be due; and
- (l) Awarding Plaintiff reasonable attorney's fees; and
- (m) Awarding Plaintiff one (1) hour wage for every day plaintiff worked more than ten (10) consecutive hours.

Breach of Contract Cause of Action

- (a) Awarding Plaintiff \$12.50 per regular hour and \$18.75 per overtime hour for each hour worked between February 5, 2007 through October 2007.
- (b) Awarding Plaintiff \$500.00 per week from October 2007 through February 2008; and
- (c) Awarding Plaintiff \$500.00 per week, per year, as vacation as required by New York State Law.


JURY TRIAL DEMAND

Plaintiff demands a trial by jury on all issues properly before this Court and all questions of fact raised by this Complaint.

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Dated: New Rochelle, New York
June 16, 2008

Yours, etc.,
The Law Firm of
ROBERT DAVID GOODSTEIN, ESQ.

By: 
ROBERT DAVID GOODSTEIN (RDG 5443)
Attorneys for Plaintiff
56 Harrison Street, Suite 401
New Rochelle, New York 10801
(914) 632-8382

KARL F. OWEN

I Karl F. Owen, the plaintiff in the within action, Owen v. No Parking Today, Inc., hereby consents to the institution of a Fair Labor Standards Act lawsuit for uncompensated overtime.

ROBERT DAVID GOODSTEIN

ATTORNEY AT LAW

56 HARRISON STREET

SUITE 401

NEW ROCHELLE, NEW YORK 10801

PHONE: (914) 632-8382

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ROBERT DAVID GOODSTEIN

PAULA JOHNSON KELLY

EILEEN WEST

OF COUNSEL

Plaintiff's Documents Exhibit #1



NO PARKING TODAY, INC.
1 228 SOUTHERN BOULEVARD
BRONX, NY 102459
(718) 542-0760

Employee's 1 Year Contract

2/5, 2007

KARL OWENS. Your responsibilities as an Employee for No Parking Today, Inc. are as follows:

- ☐ Set up and secure all sites assigned to you;
- ☐ Monitor employee's time and attendance, i.e. time in, time out and breaks;
- ☐ Troubleshoot all emergencies and incidents by using your best judgment to complete the job;
- ☐ Report all incidents to the Company immediately!
- ☐ Never leave a job unassigned! Even if you have to sit on it yourself until you are able to get a worker!
- ☐ Ensure that sign out sheets are completed by Con Edison at the end of each job! This will ensure PAYMENT BY CON EDISON!
- ☐ You agree to be a 24 hour, 7 day a week Employee;
- ☐ You will receive an hourly rate of \$12.50 per hour
- ☐ You will not receive any payments for any hour/days you do not work
- ☐ I am unable to pay paid vacation at this time. However, you are free to take vacation without pay up to 2 weeks per year.

KARL OWENS

Date: 2/5/07

Clayton Thomas, President